

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

WILLIAM ROY WELCH, INDIVIDUALLY)
AND JERRY SOWELL AND JARROD)
SOWELL, INDIVIDUALLY, AND AS NEXT)
FRIEND OF J.S., A MINOR,)
Plaintiffs,)
v.) No.: 2-09-CV-018
DOREL JUVENILE GROUP, INC.;)
AND JANELLE SOWELL,)
Defendants.)

DOREL'S MOTION FOR COSTS

Defendant Dorel Juvenile Group, Inc. (“Dorel”) hereby moves that it be awarded \$7,500.00 in costs in return for its agreement to the dismissal without prejudice of this action and its withdrawal of its Motion for Sanctions. This request supersedes Dorel’s Motion for Rule 11 Sanctions (Doc. 66) and its Opposition to Plaintiffs’ Motion to Dismiss (Doc. 79).

Dorel has paid more than \$120,000 in attorneys’ fees in defending this action. It has paid more than \$58,000.00 in fees to its three experts: Dr. William R. “Mike” Scott at Biodynamic Research Corporation, Dr. H. John Miller at Engineering Systems, Inc., and Dr. William W. Van Arsdell at Engineering Principle LLC. It has incurred additional significant costs of filing fees, copying charges and the like.

Dorel’s counsel repeatedly tried to persuade Plaintiffs’ counsel to resolve this case before both sides spent a lot of money on it. On May 4, 2011, Dorel’s counsel wrote Plaintiffs’ counsel to suggest he dismiss the case voluntarily. (See Exhibit A hereto.) Plaintiffs’ counsel refused to do so. After further discovery was taken, Dorel’s counsel repeated the offer on October 9, 2012. (See Exhibit B hereto). Plaintiffs’ counsel again refused. On November 6, 2012, Dorel’s

counsel warned Plaintiffs' counsel that he would seek sanctions if Dorel had to spend further money on this case. (See Exhibit C hereto). In response, Plaintiffs' counsel insisted that Dorel prepare and file its expert disclosures. Dorel did file its expert disclosures, but it also filed a motion for sanctions. It was only then that Plaintiffs moved to dismiss their case. (Doc. 76).

Dorel now wishes to make a final effort to resolve this matter. Dorel hereby withdraws its motion for sanctions (though without prejudice to refiling it), and moves instead that it be awarded just \$7,500 of the costs, and none of the fees, it has incurred in this case, such award to be assessed jointly against Plaintiffs and their counsel.

In support of this request, Dorel has attached as Exhibit D the invoices it has paid from its three experts, which total more than \$58,000.00. Dorel has no interest in spending the time or money necessary to prepare a more formal fee petition. It is making this request in a good faith effort to resolve this matter.

WHEREFORE, Defendant Dorel Juvenile Group, Inc. respectfully requests that it be awarded \$7,500.00 in costs, to be assessed jointly against Plaintiffs and their counsel.

Dated: February 27, 2013

Respectfully submitted,

/s/

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*Attorneys for Defendant
Dorel Juvenile Group, Inc.*

CERTIFICATE OF CONFERENCE

I hereby certify that counsel has complied with the meet and confer requirement in Local Rule CV-7(h) and that this motion is opposed. I continue to hope that Plaintiff's counsel will reconsider upon a more careful and thoughtful review of the matter.

/s/

Walter C. Greenough

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by electronic mail, on the following counsel of record on this 27th day of February, 2013:

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Walter C. Greenough

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**ORDER GRANTING DEFENDANT DOREL JUVENILE GROUP, INC.'s
MOTION FOR COSTS**

On this day, the Court considered the motion of Defendant Dorel Juvenile Group, Inc. to be awarded \$7,500.00 in costs. The Court has determined that the motion should be granted.

IT IS THEREFORE ORDERED THAT

1. Plaintiffs' complaint be and it hereby is dismissed without prejudice against Defendant Dorel Juvenile Group, Inc.
2. Dorel is awarded \$7,500.00 in costs against Plaintiffs and their counsel, jointly and severally; and
3. Dorel's motion for sanctions is denied as moot